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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200786
Party	Plaintiff United Global Media Group, Inc.
Correspondence Address	AARON SILVERSTEIN SAUNDERS & SILVERSTEIN LLP 14 CEDAR STREET, SUITE 224 AMESBURY, MA 01913-1831 UNITED STATES trademarks@massiplaw.com, asilverstein@massiplaw.com, ktoms@massiplaw.com
Submission	Opposition/Response to Motion
Filer's Name	Aaron Y. Silverstein
Filer's e-mail	trademarks@massiplaw.com, asilverstein@massiplaw.com
Signature	/asilverstein/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85155593  
Filed: October 19, 2010  
Mark: BEAUTV  
Published for Opposition: March 22, 2011

UNITED GLOBAL MEDIA GROUP, INC.,

Opposer,

v.

BONNIE TSENG,

Applicant.

Opposition No. 91200786

**UGMG'S RESPONSE IN OPPOSITION TO  
APPLICANT'S MOTION TO COMPEL**

Opposer United Global Media Group, Inc., ("UGMG") submits this Response in opposition to Applicant's Motion to Compel.

**I. INTRODUCTION**

Opposer's Motion To Compel Discovery should be denied because Opposer responded to Applicant's Request for Admissions completely and fully in accordance with its obligations under TMBP Rule 407 and FRCP 36. Opposer is perplexed by Applicant's motion insofar that it seeks to compel information already provided.

**II. FACTS**

Applicant served Defendant Request for Admissions on October 15, 2012. Applicant's request contained thirty-three (33) individually numbered requests for admission. On November 14, 2012, Opposer responded to the discovery requests with general and specific objections and either an admission or denial of 31 of the 33 requests. Opposer was unable to admit or deny two statements, namely requests 32 and 33, because

the requests are incomprehensible. Instead of providing clarity to requests 32 and 33, Applicant filed the current Motion to Compel. The current motion does not, however, specify the Requests for Admission for which Applicant is compelling further information. Rather, the thrust of the Motion is centered on Opposer's use of general and specific objection, which are clearly considered and allowed by the Rules.

### **III. ARGUMENT**

#### **A. Requests for Admission 32 and 33 Are Incomprehensible**

Opposer was unable to admit or deny requests 32 and 33. Opposer was unable to understand the statement for which Applicant was seeking admission. Request 32 reads, "admit that Applicant has never expressed intent to harm Opposer or benefit from Opposer's marks on the basis of confusion with any of Opposer's marks." Request Number 33 reads, "admit that Opposer did not address confusion concerns with Applicants mark BEAUTV prior to applying for Trademark protection for any of Opposer's marks." Simply put, these requests do not make sense.

In request 32 Opposer does not understand the phrases "intent to harm" or "intent to benefit," nor does Opposer understand how this inquiry is relevant to the opposition proceeding. Opposer does not understand request 33 because Opposer's first use dates and application filing dates are prior to those Applicant can rely upon. Thus, Opposer could not address confusion concerns with Applicant before it sought trademark protection. Opposer can neither admit nor deny such a statement without admitting that Opposer was aware of Applicant when it filed its trademark application, which it was not. For these reasons, Applicant should provide clarity or strike requests 32 and 33.

## **B. Applicant's Requests Are Objectionable**

In addition to admitting or denying 31 of Applicant's 33 requests, Opposer stated objections, because many requests lack sufficient clarity, were vague and overbroad or did not lead to the discovery of admissible information. Some of the requests inappropriately sought admission of legal conclusions in Applicant's favor. Opposer was clearly in its right to express its general and specific objections.

TMBP Rule 407.03(b) Nature of Responses, which incorporates Federal Rule of Civil Procedure 36(a)(5), states:

***Fed. R. Civ. P. 36(a)(5) Objections.*** *The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial. ... Responses to requests for admission must be made in writing, and should include an answer or objection to each matter of which an admission is requested...*

If the responding party objects to a request for admission, the reasons for objection must be stated. If a responding party believes that a matter of which an admission has been requested presents a genuine issue for trial, the party may not object to the request on that ground alone.

Among the many grounds for objection, Opposer objected to several requests on the ground that the request sought admission of a legal conclusion. In addition to its stated objection to those requests, Opposer's responded with an admission or denial. For example, request number 8 states, "admit that the mark BEAUTV is different in appearance to the mark BEAUTY TV." This statement seeks admission of a legal conclusion and is therefore clearly inappropriate for a request for admission. Opposer had no choice but to object to the request. Notwithstanding the objection, Opposer denied the request. Similarly, request 9 stated "admit that the mark BEAUTV is different in sound to the mark BEAUTY TV." Once again, Opposer had no choice but to object to this request and deny the same.

#### **IV. Conclusion**

Opposer answered Applicant's discovery request with full and complete responses to each of the 33 requests pursuant to TMBP Rule 407.03 and Federal Rule of Civil Procedure 36. Accordingly, the Board should deny Applicant's motion.

Respectfully submitted,

Dated: November 20, 2012

UNITED GLOBAL MEDIA GROUP, INC.

By its attorneys,



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Aaron Silverstein  
Saunders & Silverstein LLP  
14 Cedar Street, Suite 224  
Amesbury, MA 01913  
978-463-9130 (direct)  
asilverstein@massiplaw.com

### **CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2012, a true and complete copy of the foregoing UGMG'S RESPONSE IN OPPOSITION TO APPLICANT'S MOTION TO COMPEL, has been served on Applicant by email, by prior agreement of the parties, and via First Class Mail, postage prepaid, to:

Bonnie Tseng  
3020 Lavista Court  
Decatur, GA 30033  
bonnietseng@mindspring.com  
beautv@mindspring.com



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Aaron Silverstein

### **CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being submitted electronically via ESTTA on date shown below to the United States Patent and Trademark Office.



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Aaron Silverstein

Dated: November 20, 2012